

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

FILED

JUL 29 2010

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA

FRANKLIN C. SMITH,

Petitioner,

v.

Case No. 2:09cv513

SHERIFF OF THE CITY OF RICHMOND,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. On June 8, 2010, the magistrate judge filed a Report and Recommendation, recommending dismissal of the petition. Both parties filed objections to the magistrate judge's Report and Recommendation.

On July 13, 2010, after conducting a *de novo* review, the Court entered an order (Doc. No. 40) overruling Petitioner's objections because they were meritless. The Court also sustained the Attorney General's objection that he should be dismissed as the respondent in this matter and, based on the Attorney General's objection, substituted the Sheriff of the City of Richmond as the proper Respondent. The Court then directed the Sheriff to show cause as to why the petition should not be denied and dismissed for the

reasons expressed in the magistrate judge's Report and Recommendation. The Court received no response from the Sheriff and the time in which to do so has expired. Accordingly, this case is ready for final judgment.

The Court has reviewed the record and examined the objections filed by Petitioner to the magistrate judge's report and made *de novo* findings with respect to the portions objected to. For the reasons stated in the Court's July 13, 2010 Order, Petitioner's objections are OVERRULED. Accordingly, except to the extent that the Court sustained the Attorney General's objection regarding the proper Respondent, the Court does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on June 8, 2010, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED WITH PREJUDICE as the claims are procedurally defaulted. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a

certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

*AS/MSW*  
Mark S. Davis  
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

July 29, 2010